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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LISA JO NOBLE, ADMINISTRATOR OF
THE ESTATE OF DANIEL STRANGE,

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A.; and
DOES 1 - 25, Inclusive,

Defendants.

CASE NO. 3:22-cv-02879-LB

**DEFENDANT JPMORGAN CHASE
BANK, N.A.'S NOTICE OF MOTION AND
MOTION TO DISMISS PURSUANT TO
12(b)(6) OF THE FEDERAL RULES OF
CIVIL PROCEDURE; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: September 15, 2022

Time: 9:30 am

Courtroom: B – 15th Floor

Assigned to: Hon. Laurel Beeler

Action Filed: April 1, 2022

Action Removed: May 16, 2022

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD.**

2 PLEASE TAKE NOTICE that, on September 15, 2022 at 9:30 a.m., or as soon thereafter as the
3 matter can be heard in Courtroom B on the 15th Floor of the United States District Court for the
4 Northern District of California, San Francisco Division, located at 450 Golden Gate Ave., San
5 Francisco, CA 94102. Defendant JPMorgan Chase Bank, N.A. (“Defendant” or “Chase”) will, and
6 hereby does, move to dismiss Plaintiff Lisa Jo Noble, Administrator of the Estate of Daniel Strange’s
7 (“Plaintiff”) Complaint for Damages for Wrongful Negotiation of Check. Chase moves pursuant to
8 rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that Plaintiff fails to state
9 a claim upon which relief can be granted because Plaintiff has not plead an actionable claim against
10 Chase.

11 This Motion is based on this Notice of Motion and Motion, the accompanying memorandum of
12 points and authorities, the [Proposed] Order, the pleadings and records on file in this action, and upon
13 such other oral and documentary evidence that may be presented at the hearing on this motion.

14 Respectfully submitted,

15 DATED: July 22, 2022

GREENBERG TRAURIG, LLP

16
17 By: /s/ Cindy Hamilton
18 Cindy Hamilton
19 Shauna Imanaka
20 Attorneys for Defendant
21 JPMORGAN CHASE BANK, N.A.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Lisa Jo Noble, Administrator of the Estate of Daniel Strange (“Plaintiff”) improperly
4 attempts to hold Defendant JPMorgan Chase Bank, N.A. (“Chase”) liable for an alleged scam Plaintiff
5 claims was perpetrated by her former attorney Eyad Yasser Abdeljawad (“Mr. Abdeljawad”) and
6 National Recovery Solutions (“NRS”). Back in April 2019, Plaintiff retained both Mr. Abdeljawad and
7 NRS to assist in recovering the surplus proceeds from the foreclosure sale of her deceased brother’s
8 property. Mr. Abdeljawad and NRS recovered the surplus proceeds for Plaintiff, deposited the resulting
9 check into NRS’s account at Chase, and then made multiple payments to Plaintiff.

10 Now, 3 years later, in an effort to seek the remaining balance of the funds held by NRS, Plaintiff
11 has shifted legal theories (and defendants) and now seeks to hold Chase liable for “wrongful negotiation
12 of a check,” a vague and unrecognized claim under either state or federal law that could be interpreted to
13 be grounded in either common law or the California Commercial Code, the intention is unclear. This
14 distinction is critical to Chase’s ability to ascertain an applicable statute of limitations as well as
15 defenses available to a financial institution under the California Commercial Code. Chase should not
16 have to guess the nature of the claims against it, nor should it have to draft a motion to dismiss that
17 speculates upon the variety of potentially intended claims and the reasons why each may be time barred
18 or subject to other defenses. In addition, as currently drafted, the Complaint allows Plaintiff to shift
19 legal theories (i.e., tort, contract, statute) at any juncture, including upon Chase’s filing of a summary
20 judgment motion to evade adjudication of this claim.

21 **II. FACTUAL ALLEGATIONS**

22 **A. Factual Allegations**

23 This action arises from the alleged misappropriation of a proceeds check representing surplus
24 funds from the foreclosure of a property located in Menlo Park, California. (Compl. ¶ 6). At the time of
25 Decedent Daniel Strange’s (“Decedent”) death in 2010, he was married to Ms. Gay Dotson, and owned
26 property located in Menlo Park, California (the “Property”). (Compl. ¶ 7). The Property was
27 encumbered by a mortgage. Following Decedent’s death, the mortgage was not paid, and consequently,
28 the mortgagee declared the loan to be in default. (Compl. ¶ 9). On January 10, 2019, the Property was

1 foreclosed on via a trustee's sale. (Compl. ¶ 10). The trustee's sale of the Property netted a surplus
2 above the amount needed to satisfy the claims of the mortgagee, in the amount of \$1,487,688.10
3 ("Surplus Foreclosure Proceeds"). The Surplus Foreclosure Proceeds were retained and held by Affinia
4 Default Services, LLC ("Affinia"). (Compl. ¶ 13).

5 Plaintiff retained Mr. Abdeljawad, who filed Plaintiff's petition for probate before the San Mateo
6 Superior Court. (Compl. ¶ 14). On July 11, 2019, the court granted Plaintiff's petition for probate.
7 (Compl. ¶ 14). On July 11, 2019, the court issued letters of administration appointing Plaintiff as
8 administrator and personal representative of Decedent's estate. (Compl. ¶ 14). Following Plaintiff's
9 appointment as administrator and personal representative of Decedent's estate, Affinia arranged for the
10 transfer of the Surplus Foreclosure Proceeds. (Compl. ¶ 15). On or about July 23, 2019, Affinia
11 transferred the Surplus Foreclosure Proceeds to the trust account of its California Counsel, McCalla
12 Raymer Leibert Pierce, LLP. (Compl. ¶ 16). On July 23, 2019, McCalla Raymer Leibert Pierce, LLP
13 issued Check No. 2244, dated July 23, 2019, and made payable to "Lisa Jo Noble, Administrator of the
14 Estate of Daniel Strange" for the Surplus Foreclosure Proceeds. (Compl. ¶ 17). McCalla Raymer
15 Leibert Pierce, LLP delivered the check to Mr. Abdeljawad. (Compl. ¶ 21). Plaintiff alleges that Mr.
16 Abdeljawad gave the Surplus Foreclosure Proceeds check to NRS, and that NRS deposited the Surplus
17 Foreclosure Proceeds check into its Chase account. (Compl. ¶¶ 22-24).

18 In or about February 2020, NRS made three distributions to Plaintiff in the following amounts:

- 19 • On February 3, 2020, NRS issued Check No. 1338 from its Chase account in the amount
20 of \$138,000, payable to "Lisa J. Noble for Estate of Daniel Strange".
- 21 • On February 7, 2020, NRS wired \$62,000 from its Chase account to Plaintiff's estate
22 account.
- 23 • On February 14, 2020, NRS issued a check from its Chase account in the amount of
24 \$482,620.83, payable to "Lisa J. Noble Estate of Daniel Strange."

25 (Compl. ¶ 29). NRS's distributed a total of \$682,620.83 to Plaintiff. (Compl. ¶ 30).

26 **B. Judicially Noticeable Relevant Facts**

27 Plaintiff's factual allegations regarding Plaintiff's retention of NRS and Mr. Abdeljawad do not
28 provide a complete picture because they do not describe the contracts Plaintiff entered into with NRS

1 and Mr. Abdeljawad. The concurrently filed Request for Judicial Notice in support of Chase’s Motion
2 to Stay contains the two contracts that provide context to Plaintiff’s claims in this action. (RFJN in
3 Support of Motion to Stay (“RFJN”), Exh. F, Exs. 1A-B, 2A-B). On or about April 22, 2019, Plaintiff
4 entered into two contracts, the Client Contingency Fee Agreement and the Statement of Authorization to
5 Represent as Attorney, with prior counsel Mr. Abdeljawad and NRS to recover the Surplus Foreclosure
6 Proceeds retained by Affinia. (RFJN, Exh. F, Exs. 1A-B, 2A-B). Under the terms of the Client
7 Contingency Fee Agreement executed between Plaintiff and NRS, Plaintiff hired NRS to “recover any
8 proceeds of sale from the Trustee sale,” and NRS was to provide “necessary documents to the trustee, or
9 trustee’s legal representative, submit written claims, if necessary, retain attorneys on behalf of client in
10 order to participate in an interpleader action, file petitions to determine succession, or any other
11 proceeding should that be necessary.” (RFJN, Exh. F, Exs. 1A-B). NRS was entitled to a contingency
12 fee, not to exceed 7% of the total funds or proceeds recovered. (RFJN, Exh. F, Exs. 1A-B). Plaintiff
13 also entered into the Statement of Authorization to Represent as Attorney with Mr. Abdeljawad, where
14 she expressly granted Mr. Abdeljawad, NRS, and its staff “to communicate and do all things whatsoever
15 required on my/our behalf regarding the Trustee Sale . . . to recover proceeds of sale, to execute any
16 affidavit or Statement of Claim for Surplus Funds resulting from trustee sale, and all other remedial
17 action hitherto.” (RFJN, Exh. F, Exs. 2A-B).

18 The dispute between Plaintiff and NRS and Mr. Abdeljawad over the allocation of the Surplus
19 Foreclosure Proceeds appears to have led Plaintiff to change course and seek recovery from Chase
20 instead of the parties that she retained to recover the Surplus Foreclosure Proceeds.

21 **C. Procedural History**

22 Plaintiff alleges that she is a victim of a scam perpetrated by her prior probate counsel Mr.
23 Abdeljawad and NRS, and that she is entitled to the remaining \$805,067.27 currently retained by NRS.
24 (Compl. ¶¶ 6, 14, 17, 21-22, 29, 31). On April 1, 2022, nearly three years after the check containing the
25 Surplus Foreclosure Proceeds was first issued, Plaintiff filed this action in San Mateo Superior Court
26 and served Chase on April 14, 2022. (Compl.). Chase removed the action to this Court on May 16,
27 2022. Plaintiff asserts a single cause of action against Chase for “wrongful negotiation of check” and is
28

1 seeking recovery of the balance of the Surplus Foreclosure Proceeds that NRS has allegedly withheld
2 from her.

3 **III. LEGAL ANALYSIS**

4 **A. Legal Standard Governing Motions To Dismiss**

5 Federal Rules of Civil Procedure 8(a) requires that a complaint contain a “short and plain
6 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A
7 complaint must give the defendant fair notice of the plaintiff’s claim and the grounds upon which it
8 rests. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). In order for plaintiff to survive a motion
9 to dismiss, “[f]actual allegations must be enough to raise a right to relief above the speculative level,”
10 and plaintiff must state “enough facts to state a claim to relief that is plausible on its face.” To survive a
11 motion to dismiss [under Federal Rule of Civil Procedures 12(b)(6)], a complaint must contain sufficient
12 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Bell Alt. Corp. v.*
13 *Twombly*, 550 U.S. 544, 570 (2007); *Williams v. Gerber Prods, Co.*, 552 F.3d 934, 938 (9th Cir. 2008)
14 (quoting *Twombly*, 550 U.S. at 570) (“A district court should grant a motion to dismiss if plaintiffs have
15 not pled ‘enough facts to state a claim to relief that is plausible on its face.’”); *see also* Fed. R. Civ. P.
16 12(b)(6). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a
17 sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
18 (quoting *Twombly*, 550 U.S. at 556); *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
19 2009). For purposes of a motion to dismiss, the court must accept as true the well-pleaded facts of a
20 complaint, but not unsubstantiated conclusions of fact or law. *See Iqbal*, 556 U.S. at 678-79; *Moss*, 572
21 F.3d at 969; *Alperin v. Vatican Bank*, 410 F.3d 532, 541 (9th Cir. 2005); *In re Verifone Secs. Litig.*, 11
22 F.3d 865, 868 (9th Cir. 1993). While there is a liberal policy in favoring amendments, a court does not
23 need to grant leave to amend when permitting a plaintiff to amend would be an exercise in futility. *See,*
24 *e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (“Denial of leave to
25 amend is not an abuse of discretion where the pleadings before the court demonstrate that further
26 amendment would be futile.”).

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Even under a liberal standard of pleading, Plaintiff's claim is inadequately pled. There is no state or federally recognized cause of action for "wrongful negotiation of a check," and it is unclear from the face of the Complaint what cause of action Plaintiff is bringing against Chase. The lack of a recognized cause of action makes it unduly burdensome for Chase to litigate this action, as there is no indication whether this claim sounds in common law tort or statute, or what statute of limitations or other defenses might be applicable in the context of a motion to dismiss or summary judgment.

Accordingly, Chase moves to dismiss this action for failure to state a claim upon which relief may be granted, or for this Court to order that Plaintiff amend her Complaint so Chase may properly respond to Plaintiff's allegations. Chase should not have to guess the nature of the claims against it, nor should it have to draft a motion to dismiss that speculates upon the variety of potentially intended claims and the reasons why each may be time barred or subject to other defenses.

Chase is not liable for any cause of action under the Complaint. For the foregoing reasons, the Court should dismiss Plaintiff's Complaint, without leave to amend, or in the alternative, Chase requests that the Court issue an order requiring Plaintiff to amend her Complaint so Chase may properly respond to a recognized cause of action.

DATED: July 22, 2022

By: /s/ Cindy Hamilton
Cindy Hamilton
Shauna Imanaka
Attorneys for Defendant
JPMORGAN CHASE BANK, N.A.